IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALFRED SICOLI, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
NABISCO BISCUIT COMPANY	:	NO. 96-6053

MEMORANDUM AND ORDER

HUTTON, J. September 9, 1998

Presently before the Court is the Motion by Plaintiff, Alfred Sicoli, to Stay the Proceedings (Docket No. 41), and Defendant's response thereto (Docket No. 44). For the reasons stated below, the motion to stay the proceedings is **GRANTED**.

I. BACKGROUND

On September 4, 1996, Plaintiff initiated the instant action alleging that Defendant's actions violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, et seq., the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951, et seq. and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §§ 2601, et seq. In his action, Plaintiff charges Defendant Nabisco Biscuit Company ("Nabisco") with employment discrimination for failing to accommodate Plaintiff's physical disability. (Pl.'s Mem. at 1). Plaintiff allegedly suffers from "severe cervical neck pain and severe migraine headaches." (Pl.'s Compl. ¶27). Some of Defendant's discriminatory actions that Plaintiff alleges include

the following: suspending Sicoli from work for taking off to care for his disability; refusing to qualify Sicoli for FMLA; and failing to appoint Sicoli to positions which would accommodate his disability. (Id. at ¶ 15-24).

On July 30, 1998, Plaintiff filed a new charge with the Equal Employment Opportunity Commission ("EEOC") alleging disability discrimination and retaliation in violation of the ADA for failing to place Plaintiff in the position of Processor. In January 1998, Sicoli applied for the Processor position, which has still yet to be filled. (See Jul. 30, 1998, EEOC Charge). Sicoli claims that he applied for the position "seeking reasonable accommodation, since the position is within [his] medical restrictions." Id. According to Sicoli, he is entitled to the position under his collective bargaining agreement. Id. On August 10, 1998, Plaintiff filed this motion, requesting that this Court stay the present action pending the EEOC's processing of the new charge.\[1] The motion is granted for the following reasons.

[1] This Court suggested this course of action to "protect [a plaintiff's] claims from the bar of claim preclusion." Churchill v. Star Enters., 3 F.Supp.2d 625, 630 (E.D.Pa. 1998). "If the EEOC has not dismissed the charge or instituted a civil action within 180 days after receipt of the charge, the plaintiff may request and the EEOC must issue, a right to sue letter." Id. at 629 (citing McNasby v. Crown Cork and Seal Co., 888 F.2d 270, 274 n.3 (3d Cir. 1989), cert. denied, 494 U.S. 1066 (1990). "Once a plaintiff receives the right to sue letter, [he or she] may then petition the court to amend [his or her] complaint." Id. at 630.

II. DISCUSSION

"The power to stay proceedings is incidental to the power inherent in every court to schedule disposition of the cases on its docket so as to promote fair and efficient adjudication." Gold v. Johns-Manville Sales Corp., 723 F.2d 1068, 1077 (3d Cir. 1983). "How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis v. North Am. Co., 299 U.S. 248, 255 (1936). "In maintaining that even balance, the Court must consider whether 'there is even a fair possibility that the stay would work damage on another party.'" Dentsply Int'l, Inc. v. Kerr Mfg. Co., 734 F. Supp. 656, 658 (D. Del. 1990) (quoting Gold, 723 F.2d at 1076; Landis, 299 U.S. at 255). If so, the plaintiff must "demonstrate 'a clear case of hardship or inequity'" before the stay may be issued. Gold, 723 F.2d at 1075-76 (quoting Landis, 299 U.S. at 255).

In this case, Defendant would be prejudiced if this Court granted a stay, because of the resulting delay in the litigation. See Dentsply Int'l Inc., 734 F. Supp. at 658 (finding plaintiff would suffer prejudice if trial was delayed). Defendant has incurred all of the costs and expense of preparing for trial for this action. Moreover, as Defendant argues, forestalling the trial date would delay the disposition of claims by a current employee, for which Defendant is understandably eager to resolve. (Def.'s Mem. at 5). Thus, the issue before the Court is whether Plaintiff can demonstrate "a clear case of hardship or inequity" necessary to

grant a stay. Gold, 723 F.2d at 1075-76 (quoting Landis, 299 U.S. at 255). Plaintiff asserts that if the present case goes to trial, claim preclusion would prohibit Plaintiff from later bringing the new EEOC charge against Defendant, and this would severely prejudice Plaintiff. This Court must agree.

The doctrine of res judicata, or claim preclusion, gives a prior judgment dispositive effect, and bars subsequent litigation based on any claim that was, or could have been, raised in the prior proceeding. See Board of Trustees of Trucking Employers v. Centra, 983 F. 2d 495, 504 (3d Cir. 1992). To establish the affirmative defense of res judicata, the party must establish that: (1) the first suit resulted in a final judgment on the merits; (2) the second suit involves the same parties or their privies; and (3) the second suit is based on the same cause of action as the first. See United States v. Athlone Indus., Inc., 746 F.2d 977, 983 (3d Cir. 1984); Harding v. Duquesne light Co., No. CIV.A.95-589, 1995 WL 916926, at *2 (W.D.Pa. Aug. 4, 1995). The first two elements need not be examined by this Court. Plaintiff claims that if the instant action results in a final judgment on the merits, Defendant will have an affirmative defense of claim preclusion on the EEOC charge. (Pl.'s Mem. at 3). Furthermore, Defendant concedes that this matter involves the same parties, (see Def.'s Mem. at 2), which leaves the Court only to decide whether the same cause of action is involved.

The Third Circuit has stated that "the term 'cause of action' cannot be precisely defined, nor can a simple test be cited for use in determining what constitutes a cause of action for res judicata purposes." Protocomm Corp., Novell, Inc., No. CIV.A.94-7774, 1998 WL 351605, at *4 (E.D.Pa. Jun. 30, 1998) (citing Athlone, 746 F.2d at 983). When determining whether the same cause of action is involved for res judicata purposes, a court should consider "the similarity of the acts complained of, the similarity of the material facts alleged, and the similarity of the witnesses and documentation needed to prove the allegations. Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 963 (3d Cir. 1991) (citing Athlone, 746 F.2d at 984). These factors reflect a trend in the law of claim preclusion toward "'requiring that a plaintiff present in one suit all the claims for relief that he may have arising out of the same transaction or occurrence.'" Athlone, 746 F.2d at 984 (quoting 1BJ. Moore & J. Wicer, Moore's Federal Practice ¶ 0.410[1] at 359 (2d ed. 1983)).

Defendant fails to make any argument how the claims asserted in the instant action differ from those in the new EEOC charge. (See Def.'s Mem.). The new EEOC charge alleging disability discrimination and retaliation arises out of the same facts and circumstances as the claims in the instant action. The new EEOC charge and the claims asserted in the 1996 complaint arise out of Sicoli's employment with Nabisco and Nabisco's alleged

failure to accommodate Sicoli's physical disability. The only difference between the facts in this action and the new EEOC charge is whether Sicoli is entitled to the Processor position under the collective bargaining agreement. Thus, the facts, witnesses, and evidence underlying the claims in the instant action and the new EEOC charge are essentially the same.

This Court acknowledges that Plaintiff must prove the additional issue of relation in the new EEOC charge, however, simply because Sicoli relies on a new legal theory in the pending EEOC charge, does not prevent claim preclusion. Lubrizol, 929 F.2d at 963. "If the acts in question, the material facts alleged, and the evidence required to prove the allegations are the same for both suits, then the fact that a party relies on a new legal theory does not prevent claim preclusion." Simmons, III v. Anzon, inc., No.CIV.A.94-0467, 1994 WL 317853, at *2 (E.D.Pa. Jun. 21, 1994) (citing Lubrizol, 929 F.2d at 963). Thus, because of "the 'essential similarity of the underlying events giving rise to the various legal claims,'" the Court concludes that the new EEOC charge is the same as those asserted in the instant action. Lubrizol, 929 F.2d at 963. Thus, if the present case goes to trial and results in a final judgment on the merits, claim preclusion would prohibit Plaintiff from later bringing the new EEOC charge against Defendant. The Court acknowledges that Defendant will be prejudiced by postponing the litigation, however, Plaintiff has met

his burden of showing a clear case of hardship in the absence of postponing the trial.

III. CONCLUSION

For the foregoing reasons, Plaintiff successfully shows a clear case of hardship or inequity in the absence of the Court postponing the litigation. As such, this Court grants Plaintiff's motion to stay the proceedings.

An appropriate Order follows.

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O R D E R

AND NOW, this 9th day of September, 1998, upon consideration of Plaintiff's Motion to Stay the Proceedings (Docket No. 41), and Defendant's reply thereto (Docket No. 44), IT IS HEREBY ORDERED that Plaintiff's Motion to stay the proceedings is **GRANTED**.

BY THE COURT:

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HERBERT J. HUTTON, J.